

JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

PACIFIC BELL TELEPHONE COMPANY

DEFENDANTS

UNITED STATES OF AMERICA, CLARK REALTY BUILDERS, INC.,
CLARK REALTY BUILDERS, LP, and DOES 1 through 10(b) County of Residence of First Listed Plaintiff SAN FRANCISCO
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Steven D. Rathfon (SBN 058085)
LAW OFFICES OF STEVEN D. RATHFON
6114 Lasalle Ave., #518
Oakland, CA 94611 Tel: 510-530-6668

Attorneys (If Known)

Unknown

EDL
ADR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	PERSONAL PROPERTY	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
	<input type="checkbox"/> 375 Truth in Lending	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
	PRISONER PETITIONS	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
	Habeas Corpus:	<input type="checkbox"/> 463 Habeas Corpus – Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 530 General	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			
	<input type="checkbox"/> 440 Other Civil Rights			
REAL PROPERTY	CIVIL RIGHTS			
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting			
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment			
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations			
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare			
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment			
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			
	<input type="checkbox"/> 440 Other Civil Rights			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Sections 1346 (b)(1), 2674 (Federal Tort Claims Act)

Brief description of cause:

Action to recover damages to telephone cables caused by agencies of the United States, and its contractors

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ 77,305.45
UNDER F.R.C.P. 23CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE".IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)☐ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE

February 16, 2008

SIGNATURE OF ATTORNEY OF RECORD

Steven D. Rathfon

FILED
08 FEB 25 PM 2:20
RICHARD Y. ...
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for
PACIFIC BELL TELEPHONE COMPANY

UNITED STATES DISTRICT COURT
IN AND FOR THE
NORTHERN DISTRICT OF CALIFORNIA

EDL

CV 08 1107
Case No.

PACIFIC BELL TELEPHONE COMPANY

Plaintiff,

vs.

COMPLAINT FOR PROPERTY
DAMAGE

UNITED STATES OF AMERICA, CLARK
REALTY BUILDERS, INC., a corporation,
CLARK REALTY BUILDERS, LP, and
DOES 1 through 10

Defendants.

PACIFIC BELL TELEPHONE COMPANY (hereinafter "PBTC") complains of the
above-named defendants as follows:

1. At all relevant times PBTC was, and is, a California Corporation authorized to
act under the laws of this state.

2. Defendant CLARK REALTY BUILDERS, INC. (CRBI) is a Maryland
corporation licensed to do business, and doing business, under and by virtue of the laws of the
State of California.

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1 at or near the following location: approximately 400 yards south of the main gate, Moffett Field,
2 Santa Clara County, California.

3 10. On or about April 18, 2005, defendant CLARK, performing excavation work to
4 install a gas line for defendant USA, negligently damaged PBTC's SUBSURFACE
5 FACILITIES. After exposing PBTC's SUBSURFACE FACILITIES and before damaging
6 them, USA negligently misinformed defendants CRBI and CRBLP (hereinafter collectively
7 CLARK) that there were no working utilities at the location of the excavation. Defendants
8 CLARK and USA both negligently failed to identify and mark the SUBSURFACE
9 FACILITIES which provided numerous telecommunication services to Moffett Field. CLARK,
10 without making further inquiry, and to facilitate its installation of the gas line, cut and removed
11 a portion of the SUBSURFACE FACILITIES, thereby interrupting telecommunications
12 services to Moffett Field customers. The aforesaid conduct by defendants legally and
13 proximately caused damages to PBTC, including but not limited to, the costs of temporarily and
14 permanently repairing and replacing the SUBSURFACE FACILITIES, the construction and
15 installation of new facilities which were required due to the damage of the SUBSURFACE
16 FACILITIES, indirect costs and overhead expenses as authorized, but not limited, by the Public
17 Utilities Code Section 7952, and loss of use and other damages, yet to be fully ascertained, all of
18 which are no less than \$72,894.45.

19
20 SECOND COUNT

21 11. On or about May 17, 2005, PBTC was the owner of certain property that
22 consisted of underground cables and other facilities (hereinafter "SUBSURFACE FACILITIES
23 2") which were legally and properly located underground in conduit structures designed, owned,
24 maintained and controlled by defendant USA's agencies ARMY and NASA at or near the
25 following location: Wescott Road at Building 48, Moffett Field, Santa Clara County, California.

26 12. On or about May 17, 2005, defendants CLARK negligently damaged said
27 SUBSURFACE FACILITIES 2 while excavating with a backhoe. Defendant USA negligently

1 failed to locate, mark, warn or otherwise bring to defendants CLARK's attention the presence of
2 the said facilities contained in defendant USA's conduit structures in the immediate area of the
3 excavation. The aforesaid conduct by defendants legally and proximately caused damages to
4 PBTC, including but not limited to, the costs of temporarily and permanently repairing and
5 replacing the SUBSURFACE FACILITIES in a sum no less than \$4,411.10.

6
7 Dated: February 16, 2008

8
9 LAW OFFICES OF STEVEN D. RATHFON

10
11 By: 

12 Steven D. Rathfon
13 Attorneys for Plaintiff
14 PACIFIC BELL TELEPHONE COMPANY
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